UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/015,398	08/30/2013	D. Craig Edwards	7257-0350/PB9939.01	4479

96139 7590 01/31/2017

MARGER JOHNSON
-PHYSIO -CONTROL, INC.
888 SW 5th Avenue, Suite 1050
PORTLAND, OR 97204

EXAMINER
HOLMES, REX R

ART UNIT	PAPER NUMBER
3762	

NOTIFICATION DATE	DELIVERY MODE
01/31/2017	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@techlaw.com
physio_control_docketing@cardinal-ip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte D. CRAIG EDWARDS, KELLY J. LOCKE,
MARK B. GAUSMAN, ALEX OTMAN,
RICHARD C. NOVA, and SHAWN R. BERTAGNOLE

Appeal 2015-003318
Application 14/015,398
Technology Center 3700

Before: GEORGE R. HOSKINS, MICHAEL L. WOODS, and
LEE L. STEPINA, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

D. Craig Edwards et al. ("Appellants") appeal under 35 U.S.C. § 134 from the Examiner's decision to reject claims 1–25 and 27. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

CLAIMED SUBJECT MATTER

The claims are directed to a user interface for a defibrillator. Spec. 21 (Abstract). Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A medical device for patient treatment comprising a lid and a plurality of layered user interface components, each successive layer of user interface component becoming available to an operator of the medical device as the user interface component becomes appropriate during the operation of the medical device and patient treatment.

Br. 9 (Claims App.).

REFERENCE

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Locke	US 2003/0208237 A1	Nov. 6, 2003

REJECTION

Claims 1–25 and 27 are rejected under 35 U.S.C. § 102(e) as anticipated by Locke.[1]

OPINION

Claims 1–12

Appellants contend that the Examiner erred in finding that Locke discloses all of the features recited in claim 1. Br. 6. Specifically,

[1] The Final Office Action (dated April 9, 2014) lists claim 26 as "allowable." Final Act. 5.

Appellants assert that "Locke does not appear to teach at least 'a lid and *a plurality of layered user interface components*,' as recited." Br. 6. Rather, Appellants contend, claim 1 requires both a lid and a plurality of layered user interface components distinct from the lid, and "Locke appears to merely describe a lid 14 and *a user interface 29*." Br. 7 (citing Locke, Figs. 1 and 2).

In response, the Examiner determines that "a system that anticipates the claim theoretically only requires two user interfaces that are not showing at the same time to meet the claim limitations," and "[claim 1] only requires a plurality of successive layers." Ans. 4–5. The Examiner finds that the requirements of claim 1 are satisfied by Locke's disclosure of "a lid with an interface located on it, an electrode packet underneath the lid with a user interface located on top of it and [a] display underneath the electrode packed with yet another interface." Ans. 4. In this regard, the Examiner finds that Locke discloses two layered user interface components in addition to the lid and its accompanying user interface component. Ans. 5.

Even assuming that, for the purpose of argument, we were to agree with Appellants that the broadest reasonable interpretation of claim 1 requires a lid *in addition to* a plurality of layered user interface components distinct from the lid, we agree with the Examiner that Locke satisfies these requirements. Appellants' Specification describes the components of the layered user interface as follows.

> As depicted in the illustrated embodiment, the user interface components of the layered user interface may comprise an on/off actuator 108, *a lid 104*, *an electrode package 120* (see FIGURE 3) and a *shock key 170* (see FIGURE 6), as well as accompanying *visual and/or audible instructions* for operating the AED and for treating the patient. As will be appreciated from the following

> description, beginning with the on/off actuator 108, each successive user interface component will become available to the operator as it becomes necessary for use by or instruction to the operator.

Spec. 6:6–13 (emphases added). Describing the use of electrodes 142 and 144 disposed within electrode package 120, the Specification states, "The operator is now presented with the next layer of user interface component, namely, the defibrillation electrodes 142, 144 themselves." Spec. 9:27–29. Thus, the electrodes, shock key, and display of visual instructions described by Appellants in relation to Figures 3 and 6 of the present Application correspond to user interface components of the layered user interface. We reproduce Appellants' Figure 3 below.

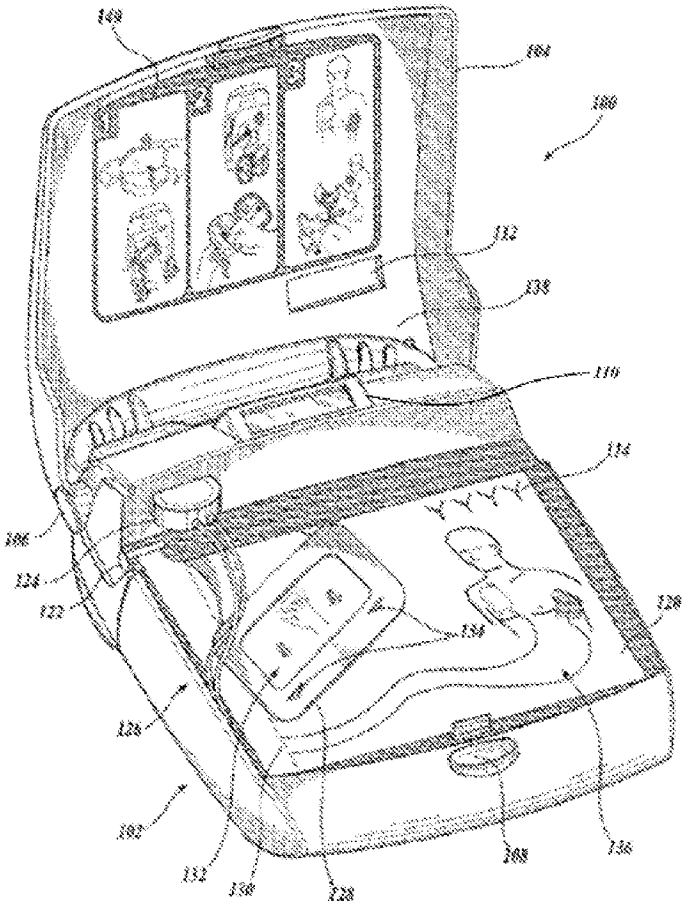

Fig. 3.

Appellants' Figure 3 depicts a defibrillator with an open lid, revealing an electrode package 120 hidden by the lid when the lid is in a closed state. Spec. 4:20–22, 8:12–20.

We reproduce Figure 2 of Locke below.

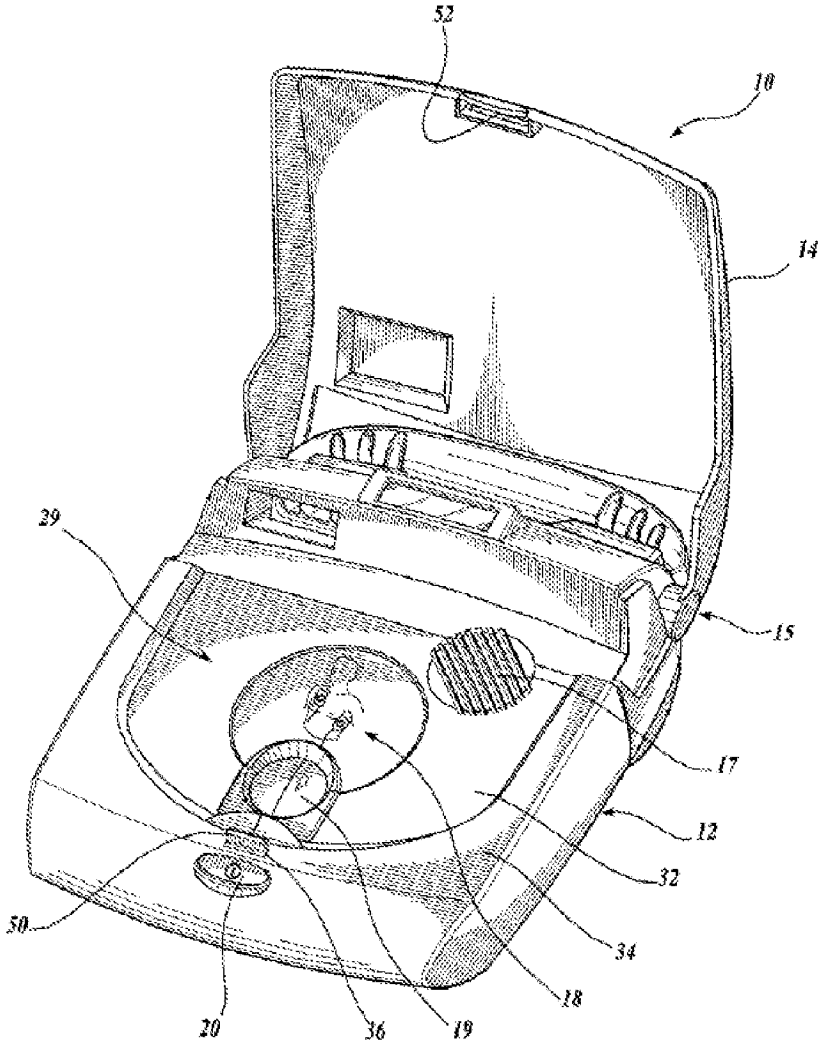

Fig. 2.

Figure 2 of Locke depicts the defibrillation device with the lid opened, exposing a user interface hidden beneath the lid (with electrodes not shown). Locke ¶¶ 12 and 20.

Locke states:

> **FIG. 2** illustrates the AED **10** of **FIG. 1** when the *lid **14*** is opened. As illustrated, the housing **12** incorporates a user interface **29** including a speaker **17**. In the present description, the term "user interface" is used to encompass any element that is used to send messages and/or instructions to and receives messages and/or instructions from an operator of the medical device **10**, including any element that is to be physically handled by the operator. For example, *the user interface **29** may include a pair of defibrillation electrodes (not shown)* placed on the housing **12** to be handled by an operator. The user interface **29** may further include stationary or other graphics provided on the face of the housing **12**, such as *graphics **18** illustrating how to apply the defibrillation electrodes on a patient's body.* Additionally, in the case of a semi-automatic AED, the user interface **29** of the AED **10** also includes *a shock key **19***, which is to be pressed by an operator to apply a defibrillation shock to the patient, as will be more fully described below.

Locke ¶ 20 (italics added). Accordingly, Locke teaches lid 14, underneath which lid are the electrodes included in interface 29. *See, e.g.*, Locke ¶ 6 (stating "the user interface covered beneath the lid may include a pair of electrodes and a shock key."). The electrodes disclosed by Locke, consistent with Appellants' Specification, qualify as one layered user interface component of the recited plurality of such components. Also beneath and distinct from the lid is shock key 19, which also qualifies as a second layered user interface component of the recited plurality of such components. The graphics display discussed in paragraph 20 of Locke qualifies as a third layered user interface component distinct from lid 14. Thus, the Examiner's finding that Locke discloses a plurality of layered user interface components as recited in claim 1 is supported by a preponderance of the evidence.

Appellants next assert:

> Locke does not appear to teach "each successive layer of user interface component becoming available to an operator of the medical device as the user interface component becomes appropriate during the operation of the medical device and patient treatment," as recited by claim 1 (with emphasis added); rather, *the entire user interface 29 of Locke (e.g., the speaker 17, defibrillation electrodes, graphics 18, and shock key 19) appears to become available to an operator of the device upon the operator opening the lid 14*, regardless of appropriateness as pertaining to any individual component of the user interface 29.

Br. 7 (emphasis modified).

In response, the Examiner finds that in Locke, "once the lid is opened the user is revealed an electrode package that includes a second user interface showing how to attach the electrodes. When the electrodes are removed the user is revealed a third user interface that shows how to provide a shock." Ans. 5.

Paragraphs 6 and 20 of Locke support, by a preponderance of the evidence, the Examiner's finding that Locke's electrodes are disposed beneath lid 14 and on top of the graphical display 18 demonstrating how to use the electrodes and that removal of the electrodes would reveal graphical display 18 beneath them. Moreover, Appellants do not contest this finding.[2] Furthermore, shock key 19, disposed on the same surface as graphical display 18, is likewise disposed beneath lid 14 and would become available upon removal of the electrodes (i.e., as appropriate). *See, e.g.*, Locke ¶ 20 and Fig. 2.

We have considered all of Appellants' arguments regarding the patentability of claim 1, however, we affirm the Examiner's rejection of

[2] Appellants did not file a Reply Brief.

claim 1 as anticipated by Locke. Claims 2–12 fall with claim 1. *See* Br. 6–7 (arguing claims 1–12 as a group).

Claims 13–25 and 27

The Examiner finds:

> Locke discloses a medical device for patient treatment comprising a plurality of layered user interface components (e.g. Figs. 1–2), each successive layer of user interface component becoming available to an operator of the medical device as the user interface component becomes appropriate during the operation of the medical device and patient treatment (e.g. ¶20). Locke discloses the system includes an activator (e.g. 20) with a power symbol located on it (e.g. Fig. 1), a connector (e.g. electrodes ¶20) and an initiator (e.g. 19).

Final Act. 4. Thus, the Examiner finds that on/off button 20 in Locke corresponds to "an activator that guides an operator to activate the defibrillator, the activator including a lid" as recited in claim 13. The Examiner further finds that the electrodes in Locke correspond to "an electrode application layer . . . that guides the operator to apply electrodes to a patient" as recited in claim 13. Finally, the Examiner finds that shock key 19 corresponds to "a defibrillation pulse delivery layer . . . that guides the operator through delivery of a defibrillation pulse to the patient" as recited in claim 13.

Appellants argue:

> As discussed above with regard to independent claim 1, Applicant submits that Locke does not appear to teach a medical device having a lid *and a plurality of layered user interface components*, let alone successive layers of user interface component *becoming available as the user interface component becomes appropriate*. Consequently, Locke does not appear to teach a medical device having an activator that includes a lid and a plurality of layered user interface components (e.g., "an electrode application layer made available to the operator

> subsequent to the activator that guides the operator to apply electrodes to a patient" and "a defibrillation pulse delivery layer made available to the operator subsequent to the electrode application layer," as recited by claim [13].)

Br. 7–8 (underlining added).

We agree with Appellants' argument on the issue of whether "activator 20" of Locke includes a lid. The Examiner does not explain sufficiently how the simple on/off *button* 20 of Locke "includes a lid" as required by claim 13. Appellants' Specification states that "movement of the lid 104 to an open position can be the event activating the AED 100." Spec. 8:1–2. The broadest reasonable interpretation, in light of the Specification, of the activator recited in claim 13 requires more than a button distinct from a lid. Accordingly, we reverse the Examiner's rejection of claim 13 and claims 14–25 and 27 depending therefrom as anticipated by Locke.

DECISION

The Examiner's rejection of claims 1–25 and 27 is affirmed as to claims 1–12 and reversed as to claims 13–25 and 27.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART